

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: March 5, 2013

TO: Olivia Garcia, Regional Director
Region 21

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: UNITE HERE, Local 11
Disneyland Resort, Grand California Hotel
Case 21-CB-88619

536-2581-3307-5000
536-2581-3307-5010

The Region submitted this case for advice as to whether Unite Here Local 11 (the Union) violated the Act by providing employees with an initial *Beck*¹ notice that is deficient because it does not apprise them of the process for filing an objection or inform them of the potential savings to be gained if they choose to object. We conclude, in agreement with the Region, that complaint should issue, absent settlement, alleging that the Union violated Section 8(b)(1)(A) by failing to provide employees with an initial notice that specifically sets forth the process for filing an objection and the potential savings if they object.

The essential facts of this case are not in dispute. The Union's current collective-bargaining agreement with Disneyland contains a union security clause. The application for membership and dues checkoff authorization that the Union provides to employees includes a notice informing employees of their right to become or remain a "nonmember" and their right to make a *Beck* objection. It states, *inter alia*:

Nonmembers have the right to be given sufficient information to enable them to intelligently decide whether to object, and to be apprised of the internal Union procedures for filing objections. *Individuals may obtain a description of the procedures which must be followed to file such objections and further information by writing to Legal Department, UNITE HERE, 275 Seventh Avenue - 10th Floor, NY 1000-6708.* (Emphasis added)

¹ *Communications Workers v. Beck*, 487 U.S. 735 (1988).

The notice does not include the amount of dues or the percentage reduction in total dues that an employee will receive if he chooses to object.

When a union seeks to collect dues and fees under a union security clause, it must first inform employees of their *General Motors* right to be or remain a nonmember.² It must also inform them of their *Beck* rights, namely, that nonmembers have the right (1) to object to paying for union activities not germane to its representational duties and to obtain a reduction in fees for such activities; (2) to be given sufficient information to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections.³

In addition, it is the General Counsel's position that the initial *Beck* notice must apprise potential objectors of the percentage by which dues and fees are reduced for objectors, as well as the full dues rate, so employees can evaluate potential savings in absolute terms.⁴ This position is in accordance with that of the D.C. Circuit.⁵ It is also the General Counsel's view that since *California Saw* contemplates only two notices,⁶ employees clearly need not wait until after they have chosen

² *NLRB v. Gen. Motors Corp.*, 373 U.S. 734, 743 (1963); *Cal. Saw & Knife Works*, 320 NLRB 224, 233 (1995), *enforced*, 133 F.3d 1012 (7th Cir. 1998).

³ *Cal. Saw & Knife*, 320 NLRB at 233.

⁴ See *United Gov't Sec. Officers of Am. Local 80 (MVM, Inc.)*, Case 5-CB-9447, Advice Memorandum dated April 29, 2003; *United Food & Commercial Workers International Union, Local 700 (Kroger Limited Partnership)*, 2008 WL 656235, JD-14-08 (ALJD dated March 7, 2008) (deferring to extant Board precedent that does not require that the initial *Beck* notice include a statement of the non-chargable percentage of union expenditures; General Counsel's exceptions are pending before the Board).

⁵ See *Penrod v. NLRB*, 203 F.3d 41, 47 (D.C. Cir. 2000) (new employees and financial core payors must be informed of dues percentage that would be chargeable if they objected). *But see L. D. Kichler Co.*, 335 NLRB 1427, 1431 n.18 (2001) (union is required to inform only objectors, not members in general, of the percentage by which dues and fees are reduced for objectors).

⁶ See *Grocery Employees, Local 738 (E.J. Brach)*, 324 NLRB 1193, 1193-94 (1997) (differentiating between "initial notice" and "notice to objectors" where there were no nonrepresentational union expenditures; employees nevertheless entitled to initial notice since an employee "might wish to pursue the nonmember option . . . to assure that he will be in a position to object if the union's policy changes in the future").

nonmembership and *Beck* objector status to be informed of how to make that objection. Accordingly, the General Counsel's position is that the initial notice must, at a minimum, instruct employees to notify the union of their decision to become a *Beck* objector.⁷

Here, the Union's initial *Beck* notice in its membership application is deficient in two ways. First, it does not provide employees with information sufficient to decide whether to become *Beck* objectors because it does not inform them of the potential savings if they object. Second, the notice does not apprise employees of the process for filing an objection. The notice states only that employees may obtain a description of the procedures for filing an objection by contacting UNITE HERE's legal department at a particular address, but does not specify how to lodge such an objection. The General Counsel has previously found similar language to be deficient.⁸

Accordingly, the Region should issue a Section 8(b)(1)(A) complaint, absent settlement, consistent with the foregoing.

/s/
B.J.K.

⁷ *Teamsters Local 848 (MV Transportation, Inc.)*, Case 31-CB-72773, Advice Memorandum dated December 17, 2012 at 4; *Misc. Drivers, Helpers, Health Care & Public Employees Local 610 (Amerigas)*, Case 14-CB-10014, Advice Memorandum dated Nov. 8, 2005 at 7; *United Parcel Service*, Case 27-CB-3759, Advice Memorandum dated November 9, 1998 at 9, 11.

⁸ *Amerigas*, Case 14-CB-10014, Advice Memorandum dated Nov. 8, 2005 at 2, 7 (finding initial notice was deficient where it referred to an employee's right to elect not to become a member but provided no guidance as to how to make such an election: "[p]rocedures for filing such challenges will be provided by the Union, upon request in writing"); *MV Transportation, Inc.*, Case 31-CB-72773, Advice Memorandum dated December 17, 2012 at 2, 4 (finding initial notice deficient where it stated only that "[t]he procedure for filing such challenges will be provided by the Union, upon request").